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Current Topics.

Sir Thomas Barclay.

THE legal profession and the general community have suffered a grievous loss owing to the death at the age of eighty-seven in Versailles on 20th January of Sir THOMAS BARCLAY, LL.D., Ph.D., the well-known authority on International Law. After studies at University College, London, and the Universities of Paris and Jena, he was called to the Bar in 1881. He wrote extensively on International Law, and was at one time acting president of the Institute of International Law and vice-president of the International Law Association. He was also president of the British Chamber of Commerce in Paris in 1899-1900 and was largely instrumental in bringing about the Treaty of Arbitration between Britain and France in 1903. In the following year the Entente Cordiale took place, and BARCLAY was knighted. In 1900 he was appointed examiner in Jurisprudence and International Public and Private Law at the University of Oxford. In 1910 he was returned as Liberal member of Parliament for Blackburn. It is sad that Sir THOMAS was destined to live through the temporary defeat of France and to see the apparent crumbling of much that he had worked for in his earlier years. He lived, however, to see what we may legitimately hope to be the turning point which will ultimately lead to the restoration of those happy relations between England and France which he did so much to promote.

United States Ambassadors.

To the student of constitutional and international law it is of interest to note, in connection with the nomination as ambassador to this country of Mr. JOHN G. WINANT of the International Labour Office in succession to Mr. KENNEDY, that, like many other nominations in the United States, it requires the approval of the Senate. In Article II of the Constitution this is laid down, and it collocates for this purpose, along with diplomatic officials, the judges of the Supreme Court and various other functionaries. Usually, as may be imagined, the President's nominee duly receives the approval of the Senate, as it has done in this instance, but it has to be sought, our brethren across the Atlantic being great sticklers for strict adherence to the requirements of the Constitution. Till as late as 1893 the United States had no "ambassadors," contenting themselves till then with envoys and other representatives, but it was found that this sometimes involved their representatives having to take a lower place than the "ambassador" of some small country, and they did not like it. Accordingly, in the year mentioned, the rank of the United States representatives at the courts of Great Britain, France, Germany, Russia, and Italy was raised to that of ambassador. Following thereon the representatives of those powers at Washington were raised to the same grade.

Solicitors and Deferment Procedure.

GENERAL satisfaction will be felt that the representations made by The Law Society to the Minister of Labour and National Service have borne fruit in that department having

now reached a clear decision, after consultation with the Lord Chancellor. The Minister has declared his inability to comply with the request of The Law Society to fix an age reservation for calling up for service in the Armed Forces for solicitors and solicitors' clerks. On the other hand, he has made arrangements to the satisfaction of The Law Society for granting deferment of calling up in necessary cases. In future, applications for deferment must be approved by The Law Society in cases where the solicitors or clerks in question registered for military service on or after 22nd June, 1940, the date for registration of men aged thirty. Where the solicitor or clerk was under thirty on 22nd June, 1940, the Society's recommendation will be specially examined in the Lord Chancellor's Department and the Lord Chancellor will then advise the Minister of Labour and National Service. All applications for deferment should be addressed to the Secretary of The Law Society. The new arrangement will go far towards allaying the uneasy feeling well expressed in recent letters to *The Times* from Mr. A. G. ALLEN and Mr. ROBERT C. NESBITT that a serious lack of skilled legal technicians may result from indiscriminate conscription.

Uniformity of Fines.

THE Current Topic on this subject in last week's issue was written before Mr. SORESENSEN's question in the Commons, on 5th February, on the diversity in fines for black-out first offences, frequently of a relatively minor character. He said that the fines ranged from £2 to £7 10s., and were imposed by different magistrates in the same area and in diverse areas, and asked whether, in view of the hardship imposed on poor people, he would encourage a greater measure of uniformity in penalties and the practice of warning a first offender in lieu of prosecution. Many defendants in these cases are nowadays represented by solicitors or counsel, and practitioners appreciate that in the absence of some degree of uniformity in the type of case, there can be no uniformity of sentence if justice is to be done. There is not a high degree of uniformity in the circumstances of lighting offences, and, as was pointed out in the reply on behalf of the Home Secretary, it is the duty of the court to decide, having regard to the circumstances of each individual case, what penalty is adequate as a deterrent. The amount will also depend on the means of the offender. It should not be assumed, however, that there are no classes of offence the circumstances of which can be described generally as being of a uniform character. In the case of such motoring offences as obstruction of the highway and exceeding the speed limit, and even in the case of some emergency law offences where the breach is more technical than wilful or careless, it has been possible for magistrates to impose a certain uniformity of penalty. In a paper read by Mr. T. KIMBER BULL at a meeting of the Magistrates' Association on 26th October, 1938, it was suggested that magistrates should try to achieve uniformity in sentence in relation to motoring offences, and LORD MAUGHAM agreed that greater uniformity was desirable. As was pointed out, however, in last week's Current Topic on this subject, this can only be achieved in relation to a limited class of cases. With regard to the practice of warning a first offender in lieu of prosecution the answer, on behalf of

the Home Secretary, was that, having regard to the danger arising out of black-out offences, he could not accept the view that a first offence should necessarily be met by a warning without regard to the circumstances.

Retirement Age for Magistrates.

ANOTHER question affecting the duties of magistrates was raised in the House of Commons on 4th February by Sir R. GLYN, who asked the Attorney-General whether any steps were in contemplation to induce persons who had reached the age of seventy-five years to offer their resignation as justices of the peace, and how many justices over the age of eighty continued to perform their duties on the bench. The Attorney-General replied that in 1938 the Lord Chancellor introduced a system under which magistrates who, for reasons of age or other infirmity, were no longer able to discharge their duties in court with full efficiency could be placed upon a supplemental list so that, while no longer sitting on the Bench, they continued to hold the position of justice of the peace for administrative purposes. Moreover, he said, since November, 1940, it had been a condition of the appointment of all persons to the Commission of the Peace that they should apply to be placed upon the supplemental list on attaining the age of seventy-five. In a circular letter to the chairmen of all his advisory committees on 22nd November, 1940, the Lord Chancellor requested them to bring his wishes to the notices of justices in all appropriate cases. If the present system, said the Attorney-General, did not result in an adequate transfer to the supplemental list, the Lord Chancellor would not hesitate to ask Parliament for further powers. Without considerable examination of an immense number of files it was not possible to say with precision how many justices over the age of eighty continued to perform their duties on the bench. The system to which the Attorney-General referred by which magistrates who were unfit through age or infirmity were put on a supplemental list was the subject of a circular sent in January, 1938, to chairmen of advisory committees, clerks of the peace and clerks of petty sessional divisions. Within a few weeks of this letter as many as 356 magistrates decided to retire. It should be emphasised that the suggestion implicit in the question in the Commons that age alone should be a test of unfitness is not implicit in the system introduced by the Lord Chancellor, as age is not infrequently accompanied by a ripeness of experience and quickness of intellect which are retained long after any arbitrarily fixed age limit has been reached. It is one of the objects of the new system to retain for the community the valuable services of older justices, at least for ministerial duties.

Bombs on Licensed Premises.

At the annual meeting of the Birmingham licensing justices on 3rd February the chairman said that it would be contrary to all principles of equity if an owner who had lost his premises owing to enemy action should also forfeit his licence. He stated that in reply to a suggestion that emergency legislation should be introduced to deal with the difficulty the Home Secretary had said that he had been giving the matter careful consideration, but could not see his way to take any immediate action. Meanwhile, he saw no objection to the justices taking the steps which they thought right in the circumstances. The chairman of the Birmingham licensing justices announced that the licences affected would accordingly be renewed. Consideration of the renewal of some licences, in respect of which they were awaiting applications, was adjourned until 3rd March. As a temporary measure, where damage was extensive and business could not be carried on, the bench granted transfers to representatives of the breweries. The chairman of the Finsbury licensing justices also announced at their annual meeting that licences of houses demolished or rendered unfit by enemy action would be renewed, subject to rebuilding plans being submitted to the justices. He added that this was an opportunity to get the licensees back to what they should be—licensed victuallers. The temporary solution suggested by the Home Secretary is one which licensing justices may adopt with confidence. They have wide powers under the Licensing Acts to consent to and also require structural alterations to premises. They have, moreover, an absolute discretion with regard to the renewal of licences (*Sharpe v. Wakefield* [1891] A.C. 173), and also a discretion to order their removal from one set of premises to others. Under the Licensing (Consolidation) Act, s. 24 (2), "unforeseen and unavoidable calamity" is a special ground on which the justices may order a "special removal." In that case the only limitations on the discretion are that the removal must be to "fit and convenient premises" in the licensing district. Thus, strange though it may seem, the present situation is not unprovided for in the Licensing Acts.

The War Damage Bill.

ALTHOUGH in the earlier part of the Committee Stage of the War Damage Bill complaint was made of the slow progress of what should be treated as an emergency measure, the committee has now examined the major part of the Bill, in little over a week of Parliamentary time. The speed and thoroughness with which the Committee has done its work is a tribute to Parliamentary democracy, if ever such a tribute was needed. Some of the difficulties that still confront the Legislature have already been referred to in these columns. The suggestion that owner-occupiers of mortgaged houses were treated unfairly with regard to value payments and that the mortgagor should be allowed to share with the mortgagee the benefit of such payments was met on 4th February by Sir KINGSLEY WOOD's statement that the question was one which would be considered in connection with future legislation concerning difficulties caused by the war generally, and did not fall within the purview of the Bill. The Attorney-General stressed that the payment appropriate in the majority of the cases in which owner-occupiers of mortgaged premises were concerned would be for cost of works. The assurance, however, that further legislation is contemplated on this vital matter will be borne in mind. It is also pleasing to note the amendment making it clear that the cost of reinstating damaged churches will fall on the State, which would not allow the enemy to defeat the religious purposes of the community. It would, as the Chancellor of the Exchequer pointed out, be contrary to the wishes of the community to endeavour to exact contributions from churches and other charitable bodies.

Requisitioning of Dwellings held on Weekly Tenancies.

THE recently issued Defence Regulation (68AB) will be welcomed by landlords of small flats and houses let on weekly tenancies in London and other vulnerable districts. Many of the tenants have gone away, in some cases without leaving any address, and the object of the regulation is to mitigate the difficulties arising as to compensation for requisitioning such premises for the accommodation of the homeless, without actually determining the tenancies. It provides that where premises held on weekly tenancies are requisitioned for the purpose of accommodating persons rendered homeless as a result of enemy action (1) if such premises have not been actually dwelt in during the period of twenty-one days immediately before the day on which possession by requisitioning takes place, and any rent due before that day is unpaid, and (2) if a notice setting out the legal consequences specified below is served on the lessee by the requisitioning authority, the compensation must be paid to the lessor instead of to the lessee. It must then be applied in reduction of the tenant's liability for rent during the period in respect of which the compensation is paid. If the compensation exceeds the amount due from the tenant by way of rent for the period for which the compensation is paid, the landlord must pay the tenant the excess, free from any deduction by way of set-off in respect of any other debt. In a circular sent by the Ministry of Health to all London and provincial local authorities, the Ministry recommends that local authorities might apply the regulation only to dwellings owned by local authorities or by responsible housing corporations, and that, when receiving compensation, housing authorities and others might treat it as discharging liability for rent due to them even though the rent due exceeds the compensation, particularly if the excess is not appreciable. The Ministry also hopes that housing authorities and others will do their best to reinstate persons wishing to return to the neighbourhood, either by removing the homeless to other premises or by offering tenants alternative similar accommodation. Those advising landlords of these small premises will no doubt point out to them the considerable advantages of the new regulation.

Recent Decision.

In *Rook v. Fairrie*, on 5th February (*The Times*, 6th February), the Court of Appeal (THE MASTER OF THE ROLLS, MACKINNON and DU PARCQ, L.J.J.) dismissed the defendant's appeal with costs, and the plaintiff's cross-appeal without costs, from a judgment of ATKINSON, J., sitting without a jury, in a libel action in which he awarded the plaintiff £550 damages. The Master of the Rolls said that there was authority to support the decision of ATKINSON, J., on damages, that as he had been able to express his views as to the defendant's conduct in a way in which a jury was unable to do except through the medium of the damages awarded, it was not necessary to give such heavy damages as might have been awarded by a jury.

Adoption of Children.

BEFORE 1927 there was no such thing as adoption in English law; but machinery for this purpose was created by the Adoption of Children Act, 1926, which came into force at the beginning of the following year. The power to make adoption orders is restricted in various ways. Among other things it is provided by s. 2 (3) of the Act that—

"An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant:

Provided that the Court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with."

Some of the grounds on which consent can be dispensed with under the proviso to this subsection are grounds of a quite negative moral character; there is nothing discreditable to the person whose consent is dispensed with in his or her being unable to be found or being incapacitated from giving consent. Some of the other grounds are overt acts very discreditable to the person in question but quite easy of ascertainment: for example, desertion, abandonment or neglect to support the infant. The final words of the proviso contemplate that there may be cases where consent ought "in the opinion of the court and in all the circumstances of the case" to be dispensed with, but there the facts are not as simple as in the main classes of case.

The power given by the proviso is a power to "dispense" with some or all of the consents required by the Act. It might have been arguable that this word contemplated only that the court should have power to make an adoption order in the absence of expressed consents, and that, at least in the case contemplated by the last words of the proviso, the court could not make an order in the presence of active objections on the part of a person whose consent is *prima facie* required.

Mr. Justice Morton has been good enough to authorise us to refer to a recent case (*Re X*) in which the scope of the last words of the proviso to s. 2 (3) was discussed in Chancery chambers. That case concerned a boy aged five years. His father was dead and his mother was living in an island (not in the British Empire). She was a British subject. Responsibility for the infant had been assumed by his paternal uncle, a gentleman of honour and distinction living in England. He had arranged and carried out the return of the infant to England and had made a cash payment to the mother, who had, in return, signed what was described as an "adoption agreement" in his favour. When the child had been in the uncle's care for some time, he applied for an adoption order. The mother, who was still living in the same island, was served with the application. She repudiated the adoption agreement, but did not return the money. She was not represented at the hearing, but sent several letters to the court protesting vigorously against an adoption order being made. Evidence was filed as to the mother's mode of life in the island and as to the child's upbringing while he was living there with her. After discussion, in the course of which he was informed by the Official Solicitor that there had never previously been a case in which the consent to be dispensed with was that of an actively dissenting parent, the learned judge stated that he was prepared to hold that he had jurisdiction to make the order notwithstanding the mother's opposition. He felt no doubt that the mother was a person whose consent ought to be dispensed with, in all the circumstances of the case, and that the adoption order ought to be made, since he was completely satisfied that it would be in the best interests of the infant.

It is respectfully submitted that the decision is not only salutary but is amply justified by the proviso to s. 2 (3). It could hardly be that the court would have no power to make an order in face of objections by a parent who had abandoned or deserted the infant. A parent so depraved might well express dissent for purely frivolous reasons. In such a case the objections must obviously be capable of being overridden; and if they can be overridden in such cases they can clearly be overridden also in the cases contemplated by the closing words of the proviso.

As the decision was without precedent, the case seems to us to be of some general interest, and practitioners will be grateful to Mr. Justice Morton for permitting it to be discussed publicly. We should add that this note has been seen by the

learned judge, who has given his permission for its publication, and that the author of it was engaged as counsel for the adopter.

Criminal Law and Practice.

Meaning of "Found Committing."

A CORRESPONDENT has sent me an interesting conundrum on a point of criminal law. Does the case of *Moran v. Jones* (1911), 104 L.T.R. 921, which deals with the meaning of "being found" on premises for an unlawful purpose within s. 4 of the Vagrancy Act, 1824, apply also to the words "if he is found" in s. 7 of the Prevention of Crimes Act, 1871?

With the necessary, although somewhat obvious, caution that the same words may bear different meanings in different contexts and in different statutes, we can proceed to examine *Moran v. Jones*, and s. 4 of the Vagrancy Act, 1824.

That section is familiar to criminal practitioners as providing a maximum penalty of three months' imprisonment with hard labour for persons who, because of the commission of any of a number of specified offences, are deemed "rogues and vagabonds." Among those offences are "being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any enclosed yard, garden, or area, for any unlawful purpose."

In *Moran v. Jones*, two men engaged under false names rooms at a Southampton hotel. A third who was with them engaged a room in his own name. A chambermaid supplied the men with four drinks on four occasions in one of the rooms. The two men did not sleep there that night, but at 1 a.m. they engaged rooms at a hotel two miles away and had more drinks there and stayed the night. They asked to be roused at 5.30 a.m. as they said that they were going to America. They were awakened, but instead of going to America, went to Bournemouth, where the two appellants were arrested, and were found in possession of a substantial quantity of American money which they were charged with stealing from their companion. It appeared that they had met by design and having met their victim by accident, had taken him to the hotel, where they had taken the money from him while playing dice. A chambermaid had found dice on the floor of the victim's room. The magistrates awarded the two appellants the maximum penalty under s. 4 of the Vagrancy Act, 1824.

"In my opinion," said Lord Alverstone, C.J., the words "found in . . . unlawful purpose" ought not to be construed too strictly, and if a charge had been made against the defendants under that section on the night of the 11th or on the next day, the fact that they were not arrested until late the following afternoon would not, in my judgment, prevent the magistrate from convicting." Bray, J., reading and adopting the judgment of Bankes, J., said: "In order to be found upon premises a person must be upon those premises, and the offence therefore consists of being upon premises for an unlawful purpose and being found there. What constitutes a finding within the meaning of the section? The simplest case would be a case of apprehension on the premises. Actual apprehension on the premises is, however, in my opinion not necessary to constitute the offence. I think that there may be many cases in which a person is found upon the premises within the meaning of the section, although he is not apprehended until after he has quitted the premises." The conviction was, however, quashed on the ground mainly that there was no evidence that the appellants were found doing anything unlawful on the premises.

The Prevention of Crimes Act, 1871, has, according to its title and preamble, the object of preventing crime, while the Vagrancy Act, 1824, is "for the punishment of idle and disorderly persons, and rogues and vagabonds." Section 7 of the 1871 Act provides a number of circumstances in which a person who has been convicted of crime, and has one or more previous convictions, shall be guilty of a crime if those circumstances occur within seven years of the previous conviction. One of those sets of circumstances is "if he is found in any place, whether public or private, under such circumstances as to satisfy the court before whom he is brought that he was about to commit or to aid in the commission of any offence . . . or was waiting for an opportunity to commit or aid in the commission of any offence. . . ."

There is also the similar set of circumstances in which an offence will be deemed to have been committed "if he is found in or upon any dwelling-house, or any building, yard or premises, being parcel of or attached to such dwelling-house, . . . (various other types of premises are mentioned) without being able to account to the satisfaction of the court before whom he is brought for his being found on such premises."

One cannot help being struck both by the similarity between the objects of the two statutes and the similarity of language used. For the purposes of the present problem there is one not unimportant difference, that in the case of the offence mentioned at the end of the last paragraph, the person concerned may not only be taken into custody by a constable (without a warrant), but he may also be apprehended, without a warrant, by the owner or occupier of the property on which he is found, or by the servants of the owner or occupier or by any other person authorised by the owner or occupier, and may be detained until he can be delivered into the custody of a constable. This seems to contemplate apprehension at the time of the offence, and it might possibly be argued that as a penal statute must be construed strictly, on the basis of *expressio unius est exclusio alterius* there can be no apprehension under this statute unless it takes place on the premises. It is doubtful, however, whether the words go so far as to show an express contemplation of arrest on the premises so as to exclude arrest elsewhere and subsequently.

The question would therefore be fairly simple if it were not for a number of authorities, apparently on the meaning of the phrase "found committing." Stroud's "Judicial Dictionary" (2nd ed.), vol. 2, p. 758, has these authorities collected in support of the statement that the phrase "applies to the case of persons who are taken *flagrante delicto* doing the specific act." On examination of these authorities, however, it appears that they are distinguishable from cases under s. 7 of the Prevention of Crimes Act, 1871. For instance, *Simmons v. Milligan*, 2 C.B. 524, was a case on the interpretation of almost exactly the same words, except, and the exception is important, that in a previous section of the same Act a constable was given power to arrest without warrant any person who "within view" of such constable offended against the Act. It was held that the offence must have been committed "within view" of the constable and also that "found committing" meant "found committing at the time of the apprehension." The offence was ringing a door bell without lawful excuse and a reading of the judgments of Tindal, C.J., and Maule, J., confirms that the interpretation of the words "found committing" was there based on the policy of the Act, having regard to both the nature of the offence charged and the words of the previous section "within view" of the constable. In the other four cases cited in Stroud's "Judicial Dictionary" the words of the statute were "may be immediately apprehended," which is clearly express language which one would have thought obviously concluded the matter in those cases (*Roberts v. Orchard*, 2 H. & C. 769; *Griffiths v. Taylor*, 2 C.P.D. 194; *Douning v. Capel*, 2 C.P. 161; *Hamsey v. Boulbee*, 1 Moo & R. 15).

The conclusion, therefore, seems to be irresistible, that immediate apprehension is not necessary to constitute the offence under the Prevention of Crimes Act, 1871, s. 7, although on the facts it may well be that the prosecution's case is sometimes weaker if no immediate apprehension takes place.

A Conveyancer's Diary.

1940 Chancery.—IV.

Re Rantzen [1940] Ch. 243 was concerned with a power of appointment arising under a settlement of 1910 by which the settlor settled certain funds on himself on protective trusts, the discretionary objects after a forfeiture being the settlor and his wife, children or remoter issue. The settlor had a general testamentary power of appointment over the funds to take effect at his death, in default of which they were to go as on his intestacy. There was a proviso that "either in contemplation of or after any marriage" the settlor was to have power to withdraw from settlement any or all of the fund and to declare new trusts for the benefit of himself, his wife, his children or remoter issue, the settlor or his wife not to have more than a life interest, and no interest of issue to vest earlier than majority or marriage.

The settlor was unmarried at the date of the settlement; he married in 1934. By this marriage he had a child, who died in 1937, followed a few days later by the wife. In 1939 the settlor appointed himself an indefeasible life interest in the property, and, directly afterwards, issued a summons asking whether the power had been validly exercised. The summons was amended during the hearing to ask whether, in the events which had happened, the settlor still had power to appoint. The odd thing about the case was that the question involved was not one that was in any way at issue, since the settlor was entitled to the income either in right of the life interest or under the protective trust, and was, indeed, the only existing object of the discretionary trust if a forfeiture were to occur. No doubt, however, he wished to establish his right to an indefeasible life interest in any event. That a

childless widower should be able to exercise a power plainly intended to enable him to provide for a family seems anomalous, though it was not in this case as undesirable as it would have been either had he not been himself settlor or had anyone else still existing been interested otherwise than as a volunteer. I imagine that settlements where the facts were different on either of these two points might receive a different interpretation. But in the particular circumstances *Morton, J.*, held that the power was exercisable "after any marriage," an expression to be construed literally; so that there was such a power. The learned judge intimated (though the point eventually was not before him) that the particular exercise of the power was probably valid.

Another case on marriage and powers of appointment is *Re Wicks* [1940] Ch. 475. Mr. and Mrs. Wicks were married on 23rd February, 1893, on which day they made a settlement whereunder the income of the settled property was to go during her life to Mrs. Wicks, who died in 1937. Subject thereto, the capital of the fund was to go as Mr. Wicks should by deed, will or codicil appoint to or among "any one or more of the issue of the said" Mr. and Mrs. Wicks, and in default the capital was to go "upon trust for such issue of the said marriage as being male shall attain the age of twenty-one years or being female shall attain that age or marry," with an ultimate trust for Mr. Wicks. It is curious to note, though it does not seem to have had any effect on the case, that the trust in default was one for "issue," i.e., issue in any degree, without any condition of their being alive at any given time; a trust like this would be very hard to apply in practice and should be avoided. What was even more curious, in the events which happened, was the power of appointment. The appointed interests were interests to fall into possession on Mrs. Wicks' death, but the appointor was Mr. Wicks, who could (and in fact did) outlive the end of the life interest, and could (and in fact tried to) appoint the fund years after the trust in default had fallen into possession. This appointment was bad for other reasons, as we shall see, but the disposition creating the power itself seems an unfortunate one.

To return to the facts. Before their marriage Mr. and Mrs. Wicks had one child, Lionel. Afterwards they had three more. The only appointment or purported appointment ever made was made by Mr. Wicks in 1940 and was an attempt to give the whole fund to Lionel. Now Lionel had been born a bastard and there was therefore no question but that, apart from any effects of the Legitimacy Act, 1926, he could take none of the fund, since gifts to "issue" mean gifts to lawful issue. But he was legitimated by that Act on 1st January, 1927, and therefore might seem to the lay mind to have been statutorily granted a right to share in the settled fund as if he had been born legitimate.

That, however, was not the case, as Farwell, J., held. The Act expressly says, in s. 1 (3), that the legitimation of a person under it does not enable him to take any interest in real or personal property except as provided later in the Act. By s. 3 (1) a legitimated person may take an interest " (a) in the estate of an intestate dying after the date of legitimation, (b) under any disposition coming into operation after the date of legitimation, (c) by descent under an entailed interest created after the date of legitimation," in like manner as if he had been born legitimate. The clear intention is to prevent the defeasance, in favour of legitimated persons, of interests existing before the legitimation by reason of the person's bastardy. And in the case of the entailed interest, the concession is hedged by s. 3 (2), which provides that where succession to property depends on the relative seniority of members of a family, the seniority of a legitimated person is to be that of the date of his legitimation: this provision therefore preserves existing vested or contingent rights as against the legitimated person.

In *Re Wicks* I should have thought that the short answer was that if Lionel was to take anything he had to take under the document of 1940 purporting to exercise a special power of appointment, and it is surely well established that the exercise of a special power occurs notionally at the date of the instrument creating the power and not at the date of the appointment; that is so, for example, with regard to questions of perpetuity; and in *Re Wicks* the power was created by an instrument of 1893.

But this simple line of reasoning does not seem to have been employed. The ground of the decision was that Lionel could not take under the purported appointment as he was not an object of the power. It was said that the only objects of the power were the issue of the marriage of Mr. and Mrs. Wicks, and that while Lionel had become, *ex post facto*, the legitimate son of his parents, he had not become, and never could become, issue of a marriage which took place some time after his birth. There is no doubt, of course, that this point is a true one, but it is not easy to see what it has to do with the case: it is true that the persons to take under the trust

in default of appointment were "issue of the said marriage," but the power to appoint had for its expressed objects "the issue of" Mr. and Mrs. Wicks. No doubt Lionel could never have taken under the trust in default, but I do not see how it could be denied that he was one of the legitimate issue of his parents, although he was not issue of their marriage. Had he not been legitimated, he would not, of course, have even been (in law) his parents' issue. But he had been legitimated, and legitimacy is a question of status. On the last point, *Re Lowe* [1929] 2 Ch. 210, is clear, in spite of the expressed regrets with which Romer, J., came to his decision there. It seems to me that the important point about *Re Wicks* is that it emphasises the reluctance of the court to construe favourably to legitimated persons those parts of the Act whereby such persons acquire rights of property, especially where a favourable construction would interfere with the existing vested or contingent rights of other persons. On this point it is in line with the general tendency of the Act itself, and with such earlier authorities as there are (see, for example, *Re Hepworth* [1936] Ch. 750, where it was held that a legitimated person could not take a share in an estate settled by the will of a person who had died before the date of legitimation, notwithstanding that the interest in question only became a vested one after the legitimation). Compare also *Re Berrey* [1936] Ch. 274, where a legitimated person was held incapable of taking an interest under the Ad. of E.A., s. 51 (2), as heir of an intestate lunatic.

Landlord and Tenant Notebook.

Notice to remedy Breach of Good Husbandry.

WHEN the landlord of an agricultural holding seeks to forfeit the tenancy on the ground of non-observance of the rules of good husbandry, the statutory notice, as was pointed out in this "Notebook" in our issue of 22nd June last (84 Sol. J. 389), may frequently omit to require the breach to be remedied, because it is irremediable. But there is another statutory provision for such notices, of which a case mentioned in our "County Court Letter" on 11th January (p. 18 of the current volume) reminds us: that contained in the Agricultural Holdings Act, 1923, s. 12 (1) (b). The section is the "security of tenure" provision, creating the right to compensation for disturbance—but with a number of conditions resolute: "unless the tenant, etc." That in subs. (1) (b) runs: "had, at the date of the notice [to quit] failed to comply within a reasonable time with any notice in writing by the landlord served on him requiring him to pay any rent due in respect of the holding or to remedy any breach being a breach which was capable of being remedied of any term or condition of the tenancy consistent with good husbandry."

In the case reported (*Powley v. Ministry of Agriculture*) the tenant had failed to comply with a notice to remedy breach of a covenant to reside personally on the holding, and the arbitrator in the subsequent claim for compensation for disturbance stated, presumably under Sched. II (10), a number of questions for the opinion of the county court.

It appeared that the tenant had taken an inn 30 miles from his farm, leaving his son to carry on the latter, subject to supervisory visits; and that he had been warned at some time or times before notice was actually served under subs. (1) (b). The arbitrator first sought guidance on the question whether these previous warnings should be taken into account. (I take it when considering the "reasonableness" of the time in which he was asked or failed to comply with the subsequent written notice.) Possibly this question was submitted by the arbitrator "while he was about it," for the wording of para. (b) leaves little room for the suggestion that the "reasonable time" could commence before the service of the notice.

The next point on which the county court was consulted was this: Can the decision in *Civil Service Co-operative Society, Ltd. v. McGrigor's Trustee* [1923] 2 Ch. 347, be taken into account, although not a decision under the Agricultural Holdings Act, 1923? The enactment with which that decision was in fact concerned is what is now the Law of Property Act, 1925, s. 146 (1), which makes the exercise of a right of forfeiture conditional on the service of a warning notice. The notice is, it will be remembered, to (a) specify the breach, (b) require the lessee to remedy it if remediable, and (c) demand compensation for the breach. In the case mentioned, landlords proposed to re-enter on the ground of bankruptcy, and served a notice of their intention to do so which did not demand compensation. True, such a demand would have been futile, if not a little unkind, but the statute does say: "(c) in any case requiring the lessee to make compensation in money for the breach." It had already been

held, in *Lock v. Pearce* [1893] 2 Ch. 271 (C.A.) (dilapidations), that in spite of the "in any case" the landlord need not ask for monetary compensation if he does not want it, and Russell, J., held in *Civil Service Co-operative Society, Ltd. v. McGrigor's Trustee*, that the same applied where the lessor not only did not want compensation, but where no compensation for the breach was possible.

I am not quite sure how it came to be suggested that this authority might affect the case of a notice under s. 12 (1) of the Agricultural Holdings Act, 1923. (There is another point on which the case is an authority, namely, that of acceptance of rent after writ—not waiver—but this seems quite out of place.) There is indeed some analogy between the two positions; in each case the landlord seeks to take advantage of what might be called qualifications of statutory provisions designed to enhance security of tenure, these qualifications, however, giving the tenant another chance. But in the one case the landlord has to get rid of a fetter; in the other to avoid a burden. In the one case his common law and contractual right to re-enter is at stake; in the other his common law and contractual right to resume possession can be exercised, but at a price. There does not seem to be any reason why the Agricultural Holdings Act, 1923, should, when restricting the tenant's right to compensation for disturbance on his breach of a vital term of his contract, insist that the landlord should not only call upon him to make good, but in the same document ask for redress in cash. If the landlord in the recent arbitration had not required the tenant to remedy the breach at all, it would be more easy to appreciate the relevance of the point submitted; but in fact the terms of the fourth question suggest that he was so required. He did complain of having been given only seven days' notice to quit, alleging that this was unreasonably short, but this would be a matter which depends on the terms of the tenancy agreement.

Thirdly, the arbitrator sought guidance on the meaning of "consistent with good husbandry" in s. 12 (1) (b), and this, I suspect, would be the question which might have troubled him most. The answer was that the words meant "in keeping with" good husbandry, and not "essential or requisite to" good husbandry. I think the court must have approached the problem in this way: The words must mean less than "essential or requisite to" good husbandry, but probably rather more than is conveyed by the word "consistent" in its primary meaning. For it is difficult to imagine a term or condition which is not at least "consistent" with good husbandry as the word is commonly used. Covenants to pay outgoings, not to do anything which would be an annoyance to neighbours, and to insure, are all in the ordinary sense "consistent with" good husbandry. I think the key is to be sought by reading para. (b) together with para. (c). The former, as we have seen, makes non-compliance with a request to remedy a breach, *being a breach which was capable of being remedied* of any term or condition of the tenancy consistent with good husbandry, a ground for depriving the tenant of compensation for disturbance; the latter runs: "had, at the date of the notice [to quit], materially prejudiced the interests of the landlord by committing a breach which was not capable of being remedied of any term or condition of the tenancy consistent with good husbandry." Read together, the two paragraphs provide for lapses in the way of bad husbandry which do not, and which do, cause lasting harm to the holding. The second chance is given in the former case only.

Finally, did unremedied breach of a covenant "personally to reside on the holding" deprive a tenant of his right to compensation? This was answered in the affirmative. Such covenants are mostly to be found in leases of farms and of licensed premises, and while they at first sight savour of the dark ages, suggesting "*glebae adscripti*," a work to which I referred in the already quoted "Notebook" of 22nd June, 1940, goes to show that they are not only reasonable, but "consistent with good husbandry." A bad tenant farmer does more harm in less time than any other bad tenant; he is selected for his qualifications, and a "no devilling" stipulation is in keeping with the requirements.

SOLICITORS' BENEVOLENT ASSOCIATION.

The monthly meeting of the directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, 5th February. Mr. Gerald Addison was in the chair and the following directors were present: Mr. R. Bullin, T.D., J.P. (Portsmouth), Vice-Chairman, Mr. P. D. Botterell, C.B.E., Mr. T. G. Cowan, Mr. C. H. Culross, Mr. T. S. Curtis, Mr. P. Stormonth Darling, Mr. A. F. King-Stephens, Mr. G. F. Pitt-Lewis, Sir Reginald Ward Poole, K.C.V.O., Mr. Gerald Russell, Mr. A. M. Welsford and Mr. Henry White, M.A. (Winchester). Grants amounting to £1,130 15s. were made from the general funds and four new members were admitted.

Our County Court Letter.

The Quality of Timber.

IN a recent case at Hereford County Court (*Potter v. Abbey Timber & Fencing Co., Ltd.*) the claim was for £10 5s. 9d. as the balance of the price of 400 beech table leg squares. The defendants claimed a set-off under their right of rejection; alternatively they counter-claimed damages for breach of warranty. The claim was admitted, and the defendants' evidence was that the leg squares were despatched on their behalf to sub-purchasers. The latter were furniture makers, and they contended that, out of 400 leg squares, 127 were not up to standard and were useless for the purpose required. The rejects developed knots and cracks and were only worth 1s. per cubic foot instead of 4s. as fixed by the contract. The plaintiffs' evidence was that the squares were not defective when despatched, and their subsequent condition might be due to sun and rain. The goods were supplied in April and the beginning of May, but no complaint was made until payment was requested on the 12th June. Owing to the lapse of time, the right of rejection was lost. The rejects were worth 2s. 6d. per cubic foot for colliery props, as 1s. was the control price for the lowest grade of standing beech. His Honour Judge Roope Reeve, K.C., held that the 127 squares were not up to contract requirements, but the right of rejection was lost owing to the failure to exercise it within a reasonable time. Judgment was therefore given for the plaintiff for £10 5s. 9d., with costs. On the counter-claim, the defendants were entitled to damages, but, in view of an offer by the sub-purchasers of 2s. 9d. per cubic foot, the damages would be limited to the difference between 4s. and 2s. 9d. per cubic foot, viz., 1s. 3d., in respect of 51 cubic feet. Judgment was therefore given for the defendants for £3 3s. 9d., with costs.

Maintenance of Intestate.

IN *Dolman and Wife v. Garra*, recently heard at Lichfield County Court, the claim was for £150 for services rendered and goods supplied to one W. Stanley, deceased, at his request. The defendant was sued as administratrix of the estate. The plaintiffs' case was that for many years they had been neighbours of the deceased, whose wife died in 1936. The deceased then asked the plaintiffs to look after him, and they agreed to do so for a stipulated sum per week. Accordingly the female plaintiff had done the deceased's cooking, washing and mending, and the male plaintiff had cultivated his garden, until the death of the deceased (at the age of seventy-three) in February, 1940. The deceased had never paid the agreed amounts, but had often said: "You will be paid." The method or time of payment was not indicated, but, shortly before his death, the deceased had handed to the male plaintiff some insurance policies, and a will leaving everything to the two plaintiffs. Without knowing what the document was (as it was covered up) the plaintiffs had in fact signed the will as witnesses. The result was that it was not admissible to probate. The cross-examination of the plaintiffs was directed to show that the services had not been rendered by agreement, but out of neighbourliness, and in the hope or expectation of being remembered in the will of the deceased. It was only when their hopes were disappointed, owing to the will being invalid, that the plaintiffs suggested any contractual basis for their relationship with the deceased. A submission was accordingly made that there was no case to answer. His Honour Judge Finmore observed that, although there might be difficulty in establishing a legal claim, the female plaintiff had a moral right to remuneration. If the defendant could make some payment, she would have the satisfaction of knowing that such a course was in accordance with her late uncle's express wishes. By consent, judgment was given for the female plaintiff for £30, without costs. The leading case on this subject is *Baxter v. Gray* (1842), 3 M. & G. 771, in which a surgeon claimed £500 for eleven years' attendance on the deceased. Having an expectation of a legacy, the plaintiff did not render a bill in the lifetime of the deceased. On finding that nothing was bequeathed to himself, the plaintiff claimed the above amount against the executors. The jury awarded the plaintiff £217 and the judgment was upheld by the Court of Queen's Bench. Tindal, C.J., stated (at p. 772): "If the evidence had shown that the work and labour were done upon an understanding between the parties, viz., that the plaintiff was to be remunerated by a legacy, that would have amounted to an agreement that he was to make no charge. But if the work and labour were performed under a hope of a legacy, I see no reason why the plaintiff should not, on such hope failing him, be, as it were, remitted to his legal right." Compare, however, *Maddison v. Alderson* (1883), 8 App. Cas. 467, in which the plaintiff was unsuccessful.

Practice Notes.

Disclaimer; Transfer of Proceedings.

IN *Clavering v. Conduit Mead Company* (1939), 57 T.L.R. 46, Morton, J., made an order transferring proceedings wherein a ground lessee sought to disclaim his lease under the Landlord and Tenant (War Damage) Act, 1939, s. 23, from the Westminster County Court to the Chancery Division. The respondents were present at the hearing.

In *Metropolitan Leather Company, Ltd. v. Herrmann* (1940), 1 All E.R. 29, a similar application under the County Courts Act, 1934, s. 111, was made before Farwell, J. But here the motion was *ex parte*. The tenant wished to disclaim the whole property. The landlord said that part only had been damaged, and that part only could be disclaimed. The tenant applied for a transfer of proceedings from Southwark County Court to the Chancery Division.

Farwell, J., made the order, with liberty to the respondents to move on two days' notice that the order be discharged. Though the application might be made *ex parte* ("The Annual Practice," 1940, p. 2593), the respondents should have an opportunity of objecting to the transfer.

Leave to Proceed where Mortgage Collateral Security.

IN *Re National Provincial Bank, Ltd.* (1940), 1 All E.R. 97, Farwell, J., was called upon to decide whether a mortgagee required leave to proceed under the Courts (Emergency Powers) Act, 1939, where the mortgage was a collateral security for the debt of a third party, and where, as between himself and the mortgagor, no personal obligation existed for the debt.

The bank applied by procedure summons against one, Liddiard, for the realisation of property in Tunbridge Wells mortgaged in 1935 by L to the bank, or for the appointment of a receiver, or for possession. Leave of the court was sought by the bank in order to exercise their remedies as mortgagees. L filed evidence showing cause why leave should not be granted.

Now L himself owed the bank no money. The mortgage was to secure not his debt, but the debt of his daughter. The mortgage was by way of legal charge in the form commonly used by banks charging the property with payment to the bank on demand of any money owing by Mrs. Milburn. The mortgage contained the usual provisions, e.g., a covenant to keep the property in a state of good repair; exercise of the statutory power of sale after the expiration of one month from the bank's demand for payment; the mortgage to be a continuing security for the whole amount due; the mortgagor to attorn tenant to the bank at a peppercorn rent from year to year. Mrs. M being unable to pay, the bank demanded payment from L. If he failed to pay, his property, under the provisions of the mortgage, might be seized by the bank, although he was under no personal obligation to pay the bank. The bank, having applied to the court for leave to proceed to take possession, argued that in this case no such leave was required.

By s. 1 (4), upon any application for leave to proceed for the exercise of any rights or remedies mentioned in subss. (1), (2) and (3)—subs. (2) requires leave to proceed, if possession, or the appointment of a receiver, is sought, or it is sought to institute proceedings for foreclosure or for sale in lieu of foreclosure—the appropriate court may, in the circumstances following, either refuse leave, or give leave subject to restrictions or conditions, if

"the person liable to satisfy the judgment or order, or to pay the rent or other debt, or to perform the obligation," is unable immediately to do so, directly or indirectly through the war. On an application for leave to proceed—Farwell, J., pointed out—the respondent must bring himself within subs. (4), he must show first that he is "the person liable . . ." and secondly that his inability to pay or to perform is due to the war.

Was L a person "liable . . . to perform the obligation"—i.e., the obligation under the mortgage—against which relief was sought? L was under no obligation to the bank, said Farwell, J. The mortgage did not bind him to pay; its effect simply was that if he did not pay, the security might be realised. The case was not within the Act. Hence no relief could be granted to him, because the Act—perhaps this was a *casus omissus*—did not provide for that case. The summons was accordingly dismissed.

At the outset of his reasoning, Farwell, J., admitted that the question was one of some difficulty. It is submitted, with great respect, that the distinction drawn by the learned judge is an artificial one. It would surely be an odd position if, were the borrower sued to judgment, she could seek relief under the Act, whereas a third party who mortgaged his

property by way of collateral security, had no such liberty! Such could not have been the intention of the Legislature. Farwell, J., recognised this, but he thought that he could not make a remedy by stretching the meaning of "perform the obligation." If the mortgagor did not pay—another person's debt—the mortgagee might realise, it is held.

"If he chooses not to pay, or is unable to pay, he may find himself in the unhappy position of having his property taken away from him. That may be his misfortune, but that does not create an obligation upon him which he has to satisfy and which arises from the mortgage into which he has entered. The mortgage creates no such obligation whatsoever" (at p. 100).

What, then, is the meaning of s. 1 (2), whereby, except with leave, "a person" is not entitled to proceed to exercise any remedy "available to him" by way of taking possession, or appointing a receiver, or instituting proceedings for foreclosure or for sale in lieu of foreclosure?

Farwell, J.—17th January.

Proceedings under the Landlord and Tenant (War Damage) Act, 1939, s. 14 (1), had been started in the Marylebone County Court. The defendants applied by motion under s. 111 of the County Courts Act, 1934, to have the proceedings transferred to the Chancery Division. On the hearing of the motion, Farwell, J., gave the following practice direction: He said that in his view the statement in the "Annual Practice" (1941, p. 2593) in the notes to s. 111 of the County Courts Act, 1934, was not correct, in so far as it related to the practice in the Chancery Division. It was undesirable to decide the matter on an *ex parte* application. The proceedings should not be removed from the county court unless and until the other party had an opportunity of being heard. The proper course in the Chancery Division was for the applicant to take out a summons which would be served on the respondent. The hearing in the first instance would be before the master, who might make the order, if he thought proper, subject to the right of either party to have the matter adjourned to the judge. The summons should show the name of the judge to whom the matter was proposed to be assigned. His lordship had made inquiries as to the practice in the King's Bench Division, and it seemed that there, although the application was originally made *ex parte*, when it came before the master, he, as a rule, directed a summons to be issued and served on the respondent.

Reviews.

The Solicitors' Handbook of War Legislation. Third Supplement. By S. M. KRUSIN, B.A., and P. H. THOROLD ROGERS, B.A., B.C.L., Barristers-at-Law. 1940. pp. xix and (with Index) 320. London. The Solicitors' Law Stationery Society, Ltd.; Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. Price 15s. net.

The production of three substantial supplements to such a monumental work as "The Solicitors' Handbook of War Legislation" in less than one year of war, and that year one of shorter hours and other difficulties of working conditions, is an amazing achievement, more particularly as the work in connection with the last two supplements has fallen on the shoulders of Mr. Rogers alone. In his preface the author pays a well-merited compliment to the printers and publishers. Like its predecessors, the volume is well and thoroughly annotated, and though the author does not claim infallibility, he never fails to give careful consideration to the points that will give rise to practical problems. As to the form of the work, there can be little doubt that it provides a quick and easy method of reference to a subject in which reference is one of the main difficulties.

War Damage Precedents. By S. P. J. MERLIN, of Gray's Inn, and the Middle Temple, Barrister-at-Law, assisted by WILLARD SEXTON, of the Middle Temple, Barrister-at-Law. 1940. Demy 8vo. pp. xii and (with Index) 140. London. Butterworth & Co. (Publishers), Ltd. Price 10s. 6d. net.

The Act which is the subject of this eminently useful work fundamentally alters the law relating to the rights and liabilities of those interested in real property, as laid down in *Redmond v. Dainton* [1920] 2 K.B. 256, and *Moorgate Estates, Ltd. v. Trower & Burston* [1940] Ch. 206; (1940), 1 All E.R. 195. Each section of the Act is fully but concisely explained and commented upon, cross-references co-ordinate their respective effects, and a complete set of the various and numerous forms is furnished. Obviously, an indispensable little book.

To-day and Yesterday.

Legal Calendar.

10 February.—On the 10th February, 1909, Mr. Justice Bigham was appointed President of the Admiralty Division, but he held that position for little more than a year, being obliged to retire on account of ill-health. He was raised to the peerage as Lord Mersey and after his resignation did much voluntary public and judicial work. It is said that an old lady, on hearing of his appointment, remarked: "Dear me! Is he going to the Admiralty Division? How very nice. I do trust that he will see that we have a strong Navy."

11 February.—Mr. Ludlam was an interesting lunatic who first attracted public attention to his eccentricity by firing a pistol at the proprietor of the fashionable and expensive London Tavern in Bishopsgate Street and then seemed to recover his senses. After that he led the authorities an energetic dance. Twice Bow Street officers tried to get into his house near Hanover Square but found it fortified and defended, and they were told that their man was under the supervision of a Dr. Munro. At last, backed by the Lord Mayor's warrant, they effected an entrance partly by force and partly by stratagem. They found two strait waistcoats, an aired shirt and a pair of boots, but no Mr. Ludlam. In terror of being again sent to a madhouse (where his relatives once before in his life had confined him) he had made a hazardous escape over the roof tops. On the 11th February, 1807, the Lord Chancellor ordered that he should stay in Dr. Munro's care, expressing the opinion that the authorities had not treated him "with the humanity due to his situation."

12 February.—On the 12th February, 1686, Evelyn recorded: "My great cause was heard by my Lord Chancellor, who granted me a re-hearing. I had six eminent lawyers, my antagonists three, whereof one was the smooth-tongued Solicitor, whom my Lord Chancellor reproved in great passion for a very small occasion. Blessed be God for His great goodness to me this day."

13 February.—On the 13th February, 1823, two hundred and fifty solicitors met at the "Crown and Anchor" tavern in the Strand to concert "such measures with respect to the King's Counsel in the highest practice in the Court of Chancery as might lead to a more effectual performance of their duty to their clients than has taken place since the establishment of the Vice-Chancellor's Court." It was proposed to appoint a committee to secure justice to their clients by employing only those members of the Bar "who would attend strictly to the business placed in their hands and who were determined not to divide their attention between the courts in such a manner as to give cause of complaint." The resolutions passed, however, proved ineffectual, as the Bar did not change its conduct and (we are told) "this clamour raised by the solicitors was wholly without foundation."

14 February.—On the 14th February, 1828, the great case of *Bardell v. Pickwick* was tried at the Guildhall.

15 February.—Sir Thomas Willes Chitty, Senior Master of the Supreme Court and King's Remembrancer, who died, aged seventy-four, on the 15th February, 1930, came of a long legal line. His great grandfather Joseph Chitty, still remembered through "Chitty's Statutes," lived from 1776 to 1841 and left sons and grandsons to increase the lustre of his name in the courts. Called to the Bar at the Inner Temple in 1877, after studying in the chambers of his grandfather "old Tom Chitty," a great special pleader who left his mark on the development of our law, he was thoroughly grounded in the old practice and so adapted himself well to the new order after 1875. He became in his day the greatest authority on procedure and for twenty-five years most of the amendments to the Rules were inspired by him.

16 February.—The ecclesiastical sensation of the year 1876 was the *Clifton Communion Case* in which on the 16th February the Judicial Committee of the Privy Council held that disbelief in the personality of Satan and in eternal punishment did not constitute Mr. Henry Jenkins, a parishioner of Christ Church, Clifton, "a notorious evil liver and depraver of the Book of Common Prayer" so as to justify the Vicar in denying him Holy Communion. Shortly afterwards the Vicar resigned his living.

THE WEEK'S PERSONALITY.

A generation of judges and advocates is short and the memory of their personalities is as transitory as the changing clouds. But one great leader is immortal; his voice still rings out, and his face is fixed for ever. After over a century he is more real than many a King's Counsel who has been but ten years in the grave and some who are not there yet. For his appearance we owe nearly as much to George Cruikshank who drew him, as to Charles Dickens who described him.

Between the two of them he is unforgettable. We can see his red face, sometimes perfectly crimson. We can hear his voice, sometimes full of tremendous emphasis as he smites the table with a mighty sound, sometimes soft and melancholy. We can follow him from the majesty and dignity of his rising to the climax of eloquence in which he has lashed himself into a state of moral elevation. A sentence of his speech to the jury and the whole man is before us: "Of this man Pickwick I will say little; the subject presents but few attractions and I, gentlemen, am not the man, nor are you, gentlemen, the men, to delight in the contemplation of revolting heartlessness and of systematic villainy. I say systematic villainy, gentlemen, and when I say systematic villainy let me tell the defendant Pickwick, if he be in court, as I am informed he is, that it would have been more decent in him, more becoming, in better judgment and in better taste, if he had stopped away." Every sentence draws the portrait of Serjeant Buzfuz.

THE DRUCE-PORTLAND CASE.

The announcement of the forthcoming sale of thousands of acres of the Welbeck Abbey Estate, some quite close to the great house itself, must sadden lovers of a stately past, and those many moderns, who see a rosy future in even more centralised control of everything, should, if they are consistent, regret the change in a way of life which, in this instance at any rate, amply justified itself in benefits conferred on the farmers and tenants of the Dukes of Portland. (May those benefits not be eaten now by the land speculator.) But to the lawyer Welbeck Abbey always recalls a leading case in imposture hardly second to the Tichborne claim. For twelve years, from 1896 to 1908, the legal battle echoed in the police courts, in the House of Lords, in the Court of Appeal, in every Division of the High Court, in the Consistory Court of London and in the Old Bailey. One of the closing episodes was the last matter heard by the Court of Crown Cases Reserved. Briefly the issue raised was whether Mr. Thomas Druce, the proprietor of the Baker Street Bazaar, who ostensibly died in 1864 and was buried in Highgate Cemetery, was one and the same person as the fabulously wealthy fifth Duke of Portland, who died in 1879. The idea started as the hallucination of an excited old lady, the widow of Mr. Druce's son Walter, but it finished up in a fantastic riot of perjury.

THE STORY TOLD.

From the first Mrs. Druce was anxious to have her claim tested by the very sensible process of opening her father-in-law's grave, which she alleged contained no body, but Herbert Druce, another son with an interest in the estate, successfully resisted this in court after court by every technical ingenuity, with what motives it is hard to see, swearing that he had himself seen his father in the coffin. Now public curiosity was aroused. The Duke had been one of the last great eccentrics, odd in dress, manner and habits, with a nervous dislike of being seen by strangers, and the unappreciative thought him mad. Yet his estates and farms were models of excellent management and he was a generous landlord. He relieved the distressful unemployment about Nottingham by engaging hundreds of men on the excavation of a labyrinth of underground rooms at Welbeck including a vast unused ballroom. The public readily swallowed the story that another of his freaks was to masquerade as a shopkeeper, and when George Druce, a grandson of Thomas Druce, took up the battle he was able to float three companies to finance his claim. He proceeded to launch a prosecution against Herbert for perjury in the earlier litigation, himself producing three accomplished perjurers to add corroborative detail to his story of the Duke's double life. When finally the coffin was opened Druce's body was there all right.

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Meaning of "Unfit."

Q. 3967. An opinion is requested on the meaning of the word "unfit" in the Landlord and Tenant (War Damage) Act, 1939. A is the tenant of a flat in London consisting of two rooms and a bathroom on the ground floor and two basement rooms and kitchen and scullery. In the bathroom the only window has been broken by war damage and boarded up. In all the other rooms by far the greater part of the windows have been broken and repaired with felt secured with battens. Except for the bathroom, none of the other rooms are completely dark, but the amount of light is very much reduced, and in some cases is very slight indeed, and the rooms are draughty in consequence of the broken windows. The electric light and gas services were cut off for a time, the latter for several weeks, but have now been resumed. There is no other serious damage. On the 24th October last, A, who was not then living at the premises, although his furniture is there, served a notice of disclaimer under the Act on his landlord. At that date the first-aid repairs mentioned above had mostly been carried out, but the gas supply was cut off. There is no means of cooking except by gas. The landlord's solicitors contend that the premises are and have been since the above first-aid repairs were carried out fit within the meaning of the Act, and have taken out an originating application in the county court to settle the matter. An opinion is requested as to whether A is now entitled and was on the 24th October last entitled to disclaim the lease.

A. The court may well decide that the premises were unfit at the date of disclaimer, having regard not so much to the draughtiness and lack of adequate light as to the complete lack of cooking facilities. The fact that most of the windows are boarded up will, however, be a material consideration. Reference should be made to the definition of "unfit" in the Landlord and Tenant (War Damage) Act, 1939, s. 24. The words "having regard to the class of tenant likely to occupy similar buildings" are important. Bearing in mind that "fitness" is not necessarily co-extensive with "good tenable repair," you may usefully refer to Lord Esher's remarks on the meaning of the latter phrase in *Proudfoot v. Hart* (1890), 25 Q.B.D. 41, at pp. 53 and 54. While it is true that the only question for the court is whether the premises were or were not fit at the date of disclaimer, the powers of the court to modify the effect of the notice of disclaimer under s. 9 of the Act should be carefully studied, having regard to the possibility of the premises being soon rendered fit without much difficulty.

Claims for War Damage.

Q. 3968. We act for persons who own ground rents and chief rents in several parts of this country. Can you give us any information as to the procedure, if any, which should be adopted by our clients under the Government's war damage scheme? Should a form V.O.W.1 be filed with the district valuer, or is it sufficient to give him notice of our clients' interest in the property, we having previously ascertained that a form V.O.W.1 has already been filed by the leaseholder or other owner of the property?

A. The form V.O.W.1 should be filed in respect of each property of which the querists' clients own the ground rent. In the space provided for particulars of damage there should be inserted: "Please refer to claim lodged by — the leaseholder of the said property."

Rent of House in Evacuation Area.

Q. 3969. An unoccupied house is situate in an area which was declared an evacuation area for the purposes of the Defence (Evacuated Areas) Regulation, 1940, on the 13th September, 1940. Under the lease affecting the property a quarter's rent fell due in arrear on the 29th September, 1940. Can the landlord claim immediate payment of rent for the period from the 24th June to the 13th September, 1940?

A. Under the Defence (Evacuated Areas) Regulations, 1940 (S.R. & O., 1940, No. 1209), art. 4, proviso (ii), the tenant cannot claim exemption from liability for rent accrued due and payable before the commencement of the evacuation period. The question is therefore answered in the affirmative.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Connors Bros., Ltd. and Others v. Connors.

Viscount Simon, L.C., Viscount Maugham, Lord Russell of Killowen, Lord Wright and Lord Porter. 24th September, 1940.

Contract (Canada)—Covenant not to carry on trade in certain area—Restraint of Trade—Public policy.

Appeal from a decision of the Supreme Court of Canada, reversing, by a majority of three to two, a decision of the Appellate Division of the Supreme Court of New Brunswick, which affirmed a decision of the Chief Justice of New Brunswick.

The respondent, Connors, and another person, on severing their business connections with the appellants, two limited companies, entered into a covenant whereby they undertook, *inter alia*, "that they will not, either directly or indirectly, engage in any other sardine business whatsoever in the Dominion of Canada nor directly or indirectly use the brands" of either company "in the Dominion of Canada or elsewhere nor for a period of ten years from the 30th April, A.D. 1925, use the name of Connors in connection with the sardine business in any country whatsoever." The respondent took out an originating summons issued under Ord. 54A of the Rules of the Supreme Court of New Brunswick, seeking to have determined the question whether upon the construction of the covenants he was debarred from engaging in the sardine business in Canada as owner, by himself or in partnership, of such a business or as a shareholder of a company engaged in it. The Supreme Court having reversed the decision of the courts below in the companies' favour, the latter now appealed. *Cur ad. vult.*

LORD MAUGHAM, delivering the judgment of the Board, said that the questions at issue were not in the main matters for construction at all, though, incidentally, some such matters might have arisen; they were questions of law based on public policy, depending to a large extent, no doubt, on the circumstances proved to exist at the time when the covenants were entered into. The Chief Justice of New Brunswick's grave doubts as to the propriety of such a proceeding under Ord. 54A, were more than justified. Order 54A was not, in their lordships' view, an appropriate method of dealing with those questions. As, however, three courts had delivered their judgments on the footing that the questions were properly raised before them, their lordships felt bound to follow the same course. In the covenant the holding of shares referred to in the summons was not mentioned, another illustration of the inconvenience of answering theoretical questions. A small holding of shares in a company carrying on a sardine business in Canada, perhaps only as a part of its undertaking, would not be covered by the words "engage in" a sardine business. On the other hand, a man might well be held to be engaging in such a business if he held a controlling interest in a company formed to carry on a sardine business. In the view of their lordships, the phrase "directly or indirectly engage in the sardine business" was not void for uncertainty. Such words found in like covenants had not infrequently been enforced in this country. In actual practice and in concrete cases where all the circumstances had been placed before the court difficulty was seldom experienced in determining whether the alleged breach was or was not within the meaning of such a covenant. The covenant was alleged to be in restraint of trade and therefore contrary to public policy. The well-established principles could not be better stated than in the often-quoted passage from the judgment of the Board delivered by Lord Parker in *Attorney-General of Australia v. Adelaide S.S. Co.* [1913] A.C. 781, at p. 795. In that statement there was no attempt to define the cases in which the community was "equally interested in maintaining freedom of contract within reasonable limits." The same was true of the proposition stated by Lord Macmillan in *Vancouver Malt and Sake Brewing, Ltd. v. Vancouver Breweries, Ltd.* [1934] A.C. 181, at p. 189. The cases which had most often come before the courts had been those connected with the sale of a goodwill and those of master and servant; and the wide differences between those two categories had repeatedly been pointed out: See *Mason v. Provident Clothing and Supply Co.* [1913] A.C. 724, at pp. 731, 738; 57 Sol. J. 739; *Morris (Herbert), Ltd. v. Saxeby* [1916] 1 A.C. 688, at pp. 701, 708, 709; 60 Sol. J. 305; and Anson's "Law of Contract," 18th ed., pp. 236, 237. Considerations which applied to cases of goodwill would often be applicable with necessary modifications to a case in which the goodwill sold was the property of a limited company. A covenant by such a company not to compete with the purchaser would, in general, be useless as a protection. As Lord Watson observed in *Nordenfelt v. Maxim-Nordenfelt, etc., Co.* [1894] A.C. 535, at p. 552, "it has been determined judicially, that in cases where the purchaser, for his own protection, obtains an obligation restraining the seller from competing with him, within bounds which . . . are reasonable and are limited in respect of space, the obligation is not obnoxious to public policy, and is therefore capable of being enforced." That that principle was applicable even in the case of an important public company where the covenant was entered into by a managing director holding shares in the company was evident from the facts of that case. The same result might well follow in a case where, instead of the undertaking, the stock of the company or a large interest in it was being sold, and directors or managers of the company being

interested in the sale were willing to enter into restrictive covenants with the purchaser. There were many cases of that character where the community was as much interested in maintaining freedom of contract within reasonable limits as in maintaining freedom of trade (see the *Adelaide Steamship Case* [1913] A.C., at p. 795). The present case must be treated as governed by the same principle as that which would have applied if the respondent had himself been selling the goodwill of the business of the appellant companies. Nor could the view be accepted that the real purpose of the transaction was to obtain monopoly in the business of Canadian sardines. There remained two questions: Whether the covenant was reasonably necessary for the protection of the goodwill of one of the appellant companies; and whether the covenant was "consistent with the interests of the public" (*McEllistram v. Ballymacelligott Co-operative Agricultural and Dairy Society, Ltd.* [1919] A.C. 548, at p. 562). The Chief Justice of Canada and Davis and Hudson, J.J., held that the restraint was not reasonable as between the parties. The other judges in Canada took the other view. The majority in the Supreme Court had, perhaps, placed too heavy an onus on the appellants. His lordship referred to the opinion of Lord Parker in *Morris (Herbert), Ltd. v. Saxeby* [1916] A.C., at p. 706; to *Whitaker v. Howe* (1840), 3 Beav. 383; *Tallis v. Tallis* (1853), 1 El. & Bl. 391, at p. 412; and *Rousillon v. Rousillon* (1880), 14 Ch. D. 351, at p. 365, and said that their lordships were, however, referring to the matter of onus only to show that they regarded it as worthy of consideration on some future occasion; and they proposed to deal with the present case as if the covenantees were called on to prove all the special circumstances. It was not necessary in relation to the trade of a large manufacturer or merchant to prove to the satisfaction of the court that the business which the covenant was designed to protect had been carried on in every part of the area mentioned in the covenant. His lordship having referred to the opinion of Lord Parker in *Morris (Herbert), Ltd. v. Saxeby* [1916] A.C., at p. 708, and to that of Lord Cave in *Fitch v. Dees* [1921] 2 A.C. 158, at p. 168; 65 Sol. J. 626, held that the covenant was not unreasonable. As for the question whether the restraint ought to be held to be injurious to the public, what was meant was that the restriction was calculated to produce a pernicious monopoly: See *Nordenfelt v. Maxim-Nordenfelt Etc. Co.* [1893] 1 Ch. 630, at pp. 646, 668, and *Attorney-General of Australia v. Adelaide S.S. Co.* [1913] A.C., at p. 796. The onus of establishing such a proposition was upon the party who attacked the covenant. Here there were no grounds for holding that a restriction restraining the respondent from carrying on a sardine business in Canada was likely to produce a real monopoly, since every other person in Canada could set up such a business, some having already done so. The covenant was, therefore, binding, and the appeal should be allowed.

COUNSEL: *Galea*; the respondent did not appear and was not represented.

SOLICITORS: Norton, Rose, Greenwell & Co.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Dan and Stone, Ltd. v. Lennard.

Scott, MacKinnon and Luxmoore, L.J.J. 6th December, 1940.
Workmen's compensation—Incapacity treated as total—Form of order ambiguous—Correct order—Workmen's Compensation Act, 1925 (15 and 16 Geo. 5, c. 84), s. 9 (4); Workmen's Compensation Act, 1931 (21 and 22 Geo. 5, c. 18), s. 1.

Respondents' appeal from an award made by His Honour Judge Clements sitting as arbitrator under the Workmen's Compensation Act, 1925, on 14th October, 1940, at Faversham County Court.

On an application by the workman the arbitrator made an order as follows: "I order that the incapacity of the said applicant (if and so long as he remains unemployed) shall be treated as total incapacity resulting from the said injury, subject to the condition that such order shall cease to be in force if the said applicant receives unemployment benefit and to no other condition . . ." The order then proceeded to make provision for weekly payments. Section 1 of the Workmen's Compensation Act, 1931, provides for the repeal of s. 9 (4) of the Workmen's Compensation Act, 1925, and the substitution of the following subsection: "If a workman who has so far recovered from the injury as to be fit for employment of a certain kind has failed to obtain employment and it appears to the county court judge either (i) that, having regard to all the circumstances, it is probable that the workman would, but for the continuing effects of the injury, be able to obtain work in the same grade in the same class of employment as before the accident, or (ii) that his failure to obtain employment is a consequence, wholly or mainly, of the injury, the judge shall order that the workman's incapacity shall be treated as total incapacity resulting from the injury for such period, and subject to such conditions, as may be provided by the order, without prejudice, however, to the right of review conferred by this Act: Provided that (i) no order shall be made under this subsection if it appears to the judge that the workman has not taken all reasonable steps to obtain employment; and (ii) every such order shall be made subject to the condition that it shall cease to be in force if the workman receives unemployment benefit." The appellants asked the Court of Appeal to set aside the order or vary it by omitting the words "if and so long as he remains unemployed."

SCOTT, L.J., said that as a result of the amendment of s. 9 (4) of the Workmen's Compensation Act, 1925, by s. 1 of the 1931 Act, the Workmen's Compensation Rules, 1933, provided that the form of order should be amended by reciting the accident and that it was probable that the workman would, but for the continuing effects of the injury, be able to obtain work, or the failure to obtain employment was in consequence, wholly or mainly, of the injury, and paras. 1 and 2 were to run: "I order that the incapacity of the said . . . shall be treated as total incapacity resulting from the injury from the period . . . to . . . subject to the condition . . . that such order shall cease to be in force if the said . . . receives unemployment benefit and to no other condition . . . (2) And I order that the said . . . do pay to the said . . . the weekly sum of . . . as compensation for the personal injury aforesaid, such weekly payment to commence as from the . . . day of . . . and to continue during the total or partial incapacity of the said workman for work or until the same shall be ended, diminished, increased or redeemed in accordance with the provisions of the above-mentioned Acts . . ." In *Marsh v. Robert Parker, Ltd.* (1932), 25 B.W.C.C. 197, the Court of Appeal said that the provision of the statute was not mandatory but directory, and might be altered to suit the circumstances. In *Darracq Motor Engineering Co., Ltd. v. Seaward* (1935), 28 B.W.C.C. 64, the Court of Appeal drafted a different form of order and as a result of what the Court of Appeal said in that case Form 24b was inserted in Appendix B to the Workmen's Compensation Rules, 1936, which ran: "(1) I order that the incapacity of the [workman] if and so long as he remains unemployed shall be treated as total incapacity resulting from the injury for the period . . . to . . . subject to the condition . . . that such order shall cease to be in force if the said [workman] receives unemployment benefit and to no other condition . . . (2) And I order that the [employers] do pay to the [workman] the weekly sum of . . . as compensation . . . if the said [workman] shall be so long unemployed, or until the same shall be ended, diminished, increased or redeemed in accordance with the provisions of the above-mentioned Acts . . ." The result of the county court judge's not having inserted a fixed period, and of his providing that the incapacity should be treated as total incapacity resulting from the injury for an indefinite future period, if and so long as the workman should remain unemployed, was to produce an effect quite different from that intended by Form 24b. The effect of the words at the end of para. (1), "and subject to no other condition" was to leave it open to the workman to argue that, so long as he was unemployed, the order must continue to remain in force. It was quite clear that that would be wrong. The power of the employer to ask for a review on the usual terms must continue. The court thought that the order should be altered as follows: "I order that the incapacity of the said applicant shall be treated as total incapacity resulting from the said injury, if and so long as he remains unemployed, or until the weekly payments hereinafter directed shall be ended, diminished, increased or redeemed in accordance with the provisions of the above-mentioned Acts." The words "and to no other condition" must be deleted, but not the words, "if and so long as he remains unemployed" as these words must remain somewhere in the paragraph. The appeal would be allowed, but without costs.

MACKINNON and LUXMOORE, L.J.J., agreed.

COUNSEL: F. W. Beney (for appellants).

SOLICITORS: Barlow, Lyde & Gilbert. The respondent did not appear.

[Reported by MAURICE SHARR, Esq., Barrister-at-Law.]

McLeod v. South Durham Steel and Iron Co.

Scott, Clauson and Goddard, L.J.J. 29th January, 1941.

Workmen's compensation—Accident "in the course of employment"—"Without instructions from his employer"—Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), s. 1 (1) and (2).

Respondents' appeal from an award under the Workmen's Compensation Act, 1925, given by His Honour Judge Gamon as arbitrator at West Hartlepool County Court on 31st October.

On the date of the accident, 6th September, 1939, the applicant was employed by the respondents as a steel work labourer and worked as a helper at a plate-shearing machine. The accident occurred owing to his hand having been caught in the gearing of the machine. He lost the first two fingers of his left hand and the third was badly damaged. It was agreed that he was seriously and permanently disabled, but the respondents alleged that the accident did not arise "in the course of" the applicant's employment within s. 1 (1) of the Workmen's Compensation Act, 1925, and that it did not fall within s. 1 (2) of the Act, which provides: "For the purposes of this Act, an accident resulting in the death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, if such act was done by the workman for the purposes of and in connection with his employer's trade or business." The applicant was nineteen years of age, and part of his work was to help in handling steel plates coming to the machine to be sheared. The plates had rough edges, and gloves were supplied for the protection of the hands. The men, however, used pieces of sacking, which they were allowed by the

respondent company to cut up from old sacks on the premises, and they used two or three pieces of sacking per day. The day before the accident the applicant had cut three extra pieces of sacking and had hidden them from his fellow workmen in the trough of a guard at the back of a machine, running under a revolving shaft about 6 feet from the ground with the convex side downwards. While he was trying the next day to remove the sacking his fingers were caught by a key fastening a small gear wheel to a larger one. The county court judge held that the applicant was entitled to an award of compensation and referred to *Harris v. Associated Portland Cement Manufacturers* [1939] A.C. 71 and *Noble v. Southern Railway Company* [1940] A.C. 583.

SCOTT, L.J., said that the question was whether the county court judge was guilty of an error of law in finding that the accident arose "in the course" of the applicant's employment within s. 1 (1) of the Act and that he came within the extension in s. 1 (2). There was ample evidence to support the county court judge's finding, and he (his lordship) would have come to the same conclusion. The appeal was dismissed.

COUNSEL: F. Sellars, K.C., F. W. Beney, D. Weitzman and W. H. Duckworth.

SOLICITORS: Cohen, Jackson & Scott, Stockton-on-Tees; R. R. Crute & Son, Sunderland.

[Reported by MAURICE SHARR, Esq., Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Bugge v. Taylor.

Viscount Caldecote, C.J., Hawke and Humphreys, JJ.

23rd October, 1940.

Road traffic—Lighting—Vehicle unlit on forecourt of hotel accessible to and used by public—"Road"—Whether offence committed—Road Transport Lighting Act, 1927 (17 & 18 Geo. 5, c. 37), ss. 1 (1), 15—Road Vehicles Lighting Regulations, 1936 (S.R. & O., 1936, No. 392), reg. 6. Appeal by case stated from a decision of Surrey Justices.

An information was preferred under s. 1 (1) of the Road Transport Lighting Act, 1927, and reg. 6 of the Road Vehicles Lighting Regulations, 1936, by the respondent, Taylor, against the appellant, Bugge, charging him with having, on the 30th December, 1939, at the forecourt of the Cock Hotel, Sutton, unlawfully permitted an unlighted vehicle to be on a road during the hours of darkness. At the hearing of the information the following facts were proved or admitted: The vehicle was, at 7.5 p.m., unlighted on the forecourt of the hotel, the forecourt being the private property of the owners. The forecourt was bounded on the street side by an island public pavement, but was open to the public street at both ends. There was no wall, fence, railing, gate or other obstruction to prevent members of the public, either on foot or in vehicles, from going over the forecourt, or to separate it from the street: nor had there been any restriction on the movements of members of the public on foot over the forecourt. The public had without let or hindrance used the forecourt in every direction, not only to reach the hotel, but also as a short cut. On occasion, public service and other vehicles had been over and through it. It was contended for Bugge that the forecourt did not constitute a road or public highway or any other road to which the public had access within the meaning of the Act and Regulations, since (a) neither the public nor any other persons had access to it as of right, and (b) the owners of the hotel could close and fence the forecourt from the public at any time if they so desired; and that the term "road," when used in a public Act and in its natural meaning, meant a way open to the public leading to and from definite points and upon which all forms of traffic might be expected. It was contended for Taylor that the forecourt was a road to which the public had access within the meaning of the Act. The justices having convicted Bugge, and fined him five shillings, he now appealed.

VISCOUNT CALDECOTE, C.J., said that the short point was that, whereas s. 1 of the Road Transport Lighting Act, 1927, required a vehicle on any road during the hours of darkness to carry lamps, the appellant had been convicted of not having lamps on a vehicle which was on a place described as the forecourt, or "pull-up," of a hotel. The Lord Justice-General (Lord Clyde) had said in *Harrison v. Hill* [1932] S.C. (J.) 13, at p. 16: "It is plain, from the terms of the definition, that the class of road intended is wider than the class of public roads to which the public has access in virtue of a positive right belonging to the public, and flowing either from statute or from prescriptive user." That passage was an accurate statement of the law, because by s. 15 of the Act the interpretation of the word "road" in s. 1 was the following: "The expression 'road' means any public highway and any other road to which the public has access." By the terms of the interpretation section, therefore, roads which were not public highways might come within the meaning of the word "road" as used in s. 1. The only question of law was whether the forecourt was capable of being held to be a road to which the public had access. There was ample material on which the justices could come to the conclusion that it was. The appeal, therefore, must be dismissed.

HAWKE and HUMPHREYS, JJ., agreed.

COUNSEL: Moresby; Gattie.

SOLICITORS: Boulton, Sons & Sandeman; The Solicitor for the Metropolitan Police.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rowley v. Everton (T.A.) & Sons.

Viscount Caldecote, C.J., Hawke and Humphreys, JJ.
29th October, 1940.

Mines and minerals—Quarry—Dangerous machinery—Charge of failure to fence—When "matter" of information arises—Whether information statute-barred—Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict. c. 77), ss. 24, 34 (1)—Quarries General Regulations, 1938 (S.R. & O., 1938, No. 632), reg. 14.

Appeal by case stated from a decision of Worcestershire Justices.

Informations were preferred on the 25th and 29th January, 1940, by the appellant, Rowley, a divisional inspector of mines, against the respondent company, alleging that, on the 31st October and the 22nd December, 1939, they, being the owners of a quarry, unlawfully failed to comply with reg. 14 (1) of the Quarries General Regulations, 1938, in failing securely to fence certain dangerous parts of machinery. The premises were a quarry within the meaning of the Quarries Act, 1894, and all the machinery and plant used in the quarry at any material time had been installed and worked on various dates between the 12th November, 1938, and the 29th August, 1939. The respondents took the preliminary objection that the informations were bad, and the proceedings statute-barred, by reason of the Quarries Act, 1894, s. 2 (1), and the Metalliferous Mines Regulation Act, 1872, s. 34 (1), as the "matter" of the informations within the meaning of s. 34 (1) of the Act of 1872 had arisen at the time when the machinery and plant was first operated, and had, therefore, arisen not later than the 29th August, 1939, which was more than three months before the date of the informations. It was contended for the inspector that the proceedings were not statute-barred, that the "matters" of the informations were the specific offences charged in them and arose on the dates of the offences, and that the informations were accordingly preferred within three months of the offences charged. The justices held that the "matter" of each of the informations arose at the time when the machinery and plant referred to were first installed and operated, and that the informations were therefore bad and the proceedings statute-barred. They accordingly upheld the objections and dismissed the informations. The inspector appealed.

VISCOUNT CALDECOTE, C.J., said that in his opinion the informations had been laid in time, on the simple ground that the offence charged in the information was that the machinery in question was not, on the day of the offence charged, kept securely fenced. The contention could not be accepted that, because the machinery had not been kept securely fenced on some days more than three months before the date of the information, the matter of the information had then arisen. The authorities contained nothing to affect that view. In *London County Council v. Cress* (1892), 56 J.P. 550, the offence charged was that the defendant erected a building outside the building line. The court was clearly right in holding that the matter of the information arose when the building was erected. In *Hull v. London County Council* [1901] 1 Q.B. 580, the court held that the point did not really arise, for it thought that no offence had been committed. He (his lordship) felt unable to agree with the view, expressed by Bruce, J., at p. 589, which the court would apparently have taken had the point arisen. In *Marshall v. Smith* (1873), L.R. 8 C.P. 416, the bye-law under which the appellant was charged provided that "the external walls of every new building . . . shall be of the following minimum thickness." A bye-law (No. 42) provided: "In case any offence . . . shall continue, the person offending shall be liable to a further penalty . . . for each day during which such offence shall continue after written notice . . . has been given . . . to the offender." On those bye-laws the court was of opinion that the offence was the building of the wall, and that the offence charged was not a continuing offence within bye-law 42, so that the matter of the information arose more than six months before the date of the information. Those cases did not require any other conclusion than that which he (his lordship) clearly thought to be the right one. The case should be remitted to the justices to hear and determine.

HAWKE and HUMPHREYS, JJ., agreed.

COUNSEL: *Valentine Holmes; Gerald Gardiner.*

SOLICITORS: *The Solicitor, the Board of Trade; Lumley & Lumley, for Holyoake & Foster, Droitwich.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.**LORD PITMAN.**

Lord Pitman, a Senator of the College of Justice of Scotland from 1928 to 1939, died on Tuesday, 11th February, at the age of seventy-six. He was educated at Eton and New College, Oxford. In 1889 he became a member of the Faculty of Advocates, and in 1919 he took silk.

SIR THOMAS BARCLAY.

Sir Thomas Barclay, LL.D., Ph.D., distinguished authority on International Law and writer on economics, died at Versailles, on Monday, 20th January, at the age of eighty-seven. An appreciation appears on p. 73 of the current issue.

MR. J. WYLIE.

Mr. James Wylie, C.B.E., barrister-at-law, died on Sunday, 9th February, at the age of sixty-five. He was called to the Bar by the Inner Temple in 1901. An appreciation of Mr. Wylie, written by the Lord Chancellor, appeared in *The Times* of Wednesday last.

MR. G. KNOWLES.

Mr. George Knowles, solicitor, of Rishton, Lancs, died on Tuesday, 28th January, at the age of seventy. Mr. Knowles was admitted a solicitor in 1900.

MR. F. MEGSON.

Mr. Fred Megson, solicitor, senior partner in the firm of Messrs. Megson & Nicholson, solicitors, of Oldham, Lancs, died on Sunday, 19th January, at the age of seventy-two. Mr. Megson was admitted a solicitor in 1892, and was the Secretary of the Oldham Law Association from its inception in 1893 until 1939 when he was elected President for that year.

Parliamentary News.**PROGRESS OF BILLS.****HOUSE OF LORDS.**

Cardiff Corporation Bill [H.L.].	
Read Second Time.	[11th February.
Derwent Valley Water Bill [H.L.].	
Read Second Time.	[11th February.
East Surrey Gas Bill [H.L.].	
Read Second Time.	[11th February.

HOUSE OF COMMONS.

Cannock Urban District Council Bill [H.C.].	
Read Second Time.	[11th February.
Great Western Railway (Superannuation Fund) Bill [H.C.].	
Read Second Time.	[11th February.
Great Western Railway (Variation of Directors Qualification) Bill [H.C.].	
Read Second Time.	[11th February.
Kent Electric Power Bill [H.C.].	
Read Second Time.	[11th February.
Land Drainage (Scotland) Bill [H.C.].	
Read First Time.	[11th February.
London Midland and Scottish Railway Bill [H.C.].	
Read Second Time.	[11th February.
Ministry of Health Provisional Order (Shipley) Bill [H.C.].	
Read Third Time.	[11th February.
Railway Clearing System Superannuation Fund Corporation Bill [H.C.].	
Read Second Time.	[11th February.
Southern Railway (Superannuation Fund) Bill [H.C.].	
Read Second Time.	[11th February.
War Damage Bill [H.C.].	
In Committee.	[11th February.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL from the 16th September, 1939, to the 8th February, 1941.)

STATUTORY RULES AND ORDERS, 1940-41.

E.P. 122.	Bacon (Prices) Order, 1940. General Licence, January 30, 1941.
E.P. 116.	Cold Storage (Control of Undertakings) (Charges) Amendment Order, January 28.
E.P. 129.	Control of the Cotton Industry (No. 16) Order, January 31, 1941.
E.P. 101.	Control of Molasses and Industrial Alcohol (No. 11) Order, January 27.
E.P. 134.	Control of Native Cattle Hides (No. 1) Order, 1940. Direction No. 1, January 31, 1941.
E.P. 114.	Control of Timber (No. 19) Order, January 30.
E.P. 130.	Control of the Cotton Industry (No. 11) Order, 1940. Direction No. 2, January 31, 1941.
E.P. 115.	Defence (General) Regulations, 1939. Order in Council, January 29, 1941, adding Regulations 23cc and 60n and amending Regulation 62, and the Third Schedule.
E.P. 127.	Defence (Finance) Regulations, 1939. Order in Council, January 29, 1941, adding Regulation 7n.
E.P. 123.	Feeding Stuffs (Licensing and Control) Order, January 30, 1941.
E.P. 126.	Feeding Stuffs (Licensing and Control) Order, 1941. General Licence, January 30, 1941.
E.P. 125.	Feeding Stuffs (Licensing and Control) Order, 1941. General Licence (Retailers), January 30, 1941.
E.P. 124.	Feeding Stuffs (Rationing) Order, January 30.

- E.P. 133. **Food Control** Committees (England and Wales and Northern Ireland) Enforcement Order, January 28.
 E.P. 121. **Fuel and Lighting** Order, January 27, 1941.
 E.P. 117. **Home Produced Eggs** (Maximum Prices) Order, January 29.
 E.P. 118. **Imported Eggs** (Maximum Prices) Order, January 29.
 E.P. 104. **Limitation of Supplies** (Miscellaneous) (No. 5) Order, 1940. Amendment, January 27, 1941, to the General Licence, December 19, 1940, regarding the Supply of Fabric for the Replacement of Glass in Factories.
 E.P. 105. **Limitation of Supplies** (Woven Textiles) Order, 1940. Amendment, January 27, 1941, to the General Licence, December 19, 1940, regarding the Supply of Fabric for the Replacement of Glass in Factories.
 E.P. 119. **Milk** (Retail Prices) (Northern Ireland) Order, 1940. Amendment Order, January 29, 1941.
 E.P. 120. **Nuts** (Maximum Prices) Order, January 29, 1941.
 No. 113 (L.2). **Pensions Appeals Tribunals** (England and Wales) (Amendment) Regulations, January 23, 1941.
 No. 2216. **Ploughing Grants** (Application to 1941) Order, December 30, 1940.
 E.P. 83. **Railway Companies** (Accounts and Returns) Order, January 22, 1941.
 No. 128. **Wimbledon and Putney Commons Conservators** (Temporary Provisions) Order, January 29.

[E.P. indicates that the Order is made under Emergency Powers.]

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. P. G. COOMBS to be the Registrar of Oundle and Thrapston County Court as from 1st February. Mr. Coombs has been acting Registrar since 9th December, 1939.

The Lord Chancellor has appointed Mr. W. J. W. DICKINSON (Registrar of the Bristol County Court) to be the Registrar of the Weston-super-Mare County Court in addition as from 28th January.

The following promotions and transfers have been announced by the Colonial Legal Service: Mr. W. D. CAREW, British Judge, New Hebrides, to be Magistrate, Malaya; Mr. P. E. F. CRESSALL, President, District Court, Palestine, to be Puisne Judge, Hong Kong; Mr. E. J. DAVIES, Deputy Legal Adviser, Federated Malay States, to be Solicitor-General, Straits Settlements; Mr. L. E. C. EVANS, Relieving President, District Court, Palestine, to be Deputy Legal Adviser, Malaya.

Notes.

Mr. Henry Wynn Parry, K.C., Mr. Wilfrid Fabian Waite, and Mr. Harold Otto Danckwerts have been elected Benchers of Lincoln's Inn.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Wednesday, the 26th February, at 10 a.m.

There are many members of the Bar and solicitors serving in the Auxiliary Fire Service in London and the provinces, mostly in a part-time capacity. We have been asked by the National A.F.S. Association to publish a request that names, addresses and ranks should be sent to Mr. Harold Bevir, Chairman of the Association, at the Headquarters, 28, Russell Square, London, W.C.1.

The annual statistical report relating to new companies registered in England during the year ended 31st December, 1940, has just been issued by Messrs. Jordan & Sons, Ltd., Company Registration Agents, of 116, Chancery Lane, London, W.C.2. The number of new companies registered in 1940 was 6,981, compared with the 1939 total of 10,577. The total nominal capital was £26,156,144 against £49,800,488 in 1939.

The Home Secretary, in his latest report to Parliament about action taken under Defence Regulation 18a, states that in December, 1940, detention orders were made against fourteen persons. Of these one was an alien of non-enemy origin and the rest were British subjects. Six of the British subjects were of enemy origin and one was of alien (non-enemy) origin. In 155 cases effect was given to recommendations of the Advisory Committee that detained persons should be released. In eighteen cases the Home Secretary decided not to act upon the recommendations. On 31st December the number of persons detained under the regulation was 1,989.

Wills and Bequests.

Mr. Middleton Smith, solicitor, of Whithy, left £43,823, with net personality £43,287.

Mr. Albert George Eccleston, solicitor, of Whitechurch, Salop, left £28,133, with net personality £26,092.

Court Papers.

SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON			
DATE.	EMERGENCY ROTA.	APPEAL COURT NO. 1.	MR. JUSTICE FARWELL.
Feb. 17	Mr. Hay	Mr. Blaker	Mr. Andrews
" 18	More	Andrews	Jones
" 19	Blaker	Jones	Hay
" 20	Andrews	Hay	More
" 21	Jones	More	Blaker
" 22	Hay	Blaker	Andrews

GROUP A.		GROUP B.	
MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.	MR. JUSTICE UTHWATT.	MR. JUSTICE MORTON.
Non-Witness.	Witness.	Non-Witness.	Witness.
Feb. 17	Mr. Blaker	Mr. Jones	Mr. Hay
" 18	More	Andrews	More
" 19	Andrews	Jones	Blaker
" 20	Jones	Hay	Andrews
" 21	Hay	More	Jones
" 22	More	Blaker	Hay

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 20th February, 1941.

	Div. Months.	Middle Price 12 Feb. 1941.	Flat Interest Yield.	† Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4%, 1957 or after	FA	110½	3 12 5	3 3 1
Consols 2½%	JAJQ	77½	3 4 3	—
War Loan 3%, 1955-59	AO	101½	2 19 3	2 17 9
War Loan 3½%, 1952 or after	JD	103½	3 7 7	3 2 8
Funding 4%, Loan 1960-90	MN	113½	3 10 4	3 0 11
Funding 3%, Loan 1959-69	AO	99½	3 0 4	3 0 6
Funding 2½%, Loan 1952-57	JD	98½	2 15 10	2 17 4
Funding 2½%, Loan 1956-61	AO	92½	2 14 1	3 0 1
Victory 4%, Loan Average life 20 years	MS	111	3 12 1	3 4 10
Conversion 5%, Loan 1944-64	MN	108½	4 12 6	2 3 4
Conversion 3½%, Loan 1961 or after	AO	104½	3 7 0	3 3 10
Conversion 3%, Loan 1948-53	MS	102	2 18 10	2 13 3
Conversion 2½%, Loan 1944-49	AO	99½	2 10 1	2 10 8
National Defence Loan 3%, 1954-58	JJ	101½	2 19 3	2 17 9
Local Loans 3%, Stock 1912 or after	JAJQ	90	3 6 8	—
Bank Stock	AO	340½	3 10 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	91	3 5 11	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	84½	3 5 1	—
Redemption 3%, 1986-96	AO	94½	3 3 6	3 4 3
Sudan 4½%, 1939-73 Average life 18½ years	FA	109	4 2 7	3 16 3
Sudan 4%, 1974 Red. in part after 1950	MN	107	3 14 9	3 2 8
Tanganyika 4%, Guaranteed 1951-71	FA	109	3 13 5	2 18 11
Lon. Elec. T. F. Corp'n. 2½%, 1950-55	FA	93	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4%, 1955-70	JJ	105	3 16 2	3 10 11
Australia (Commonwealth) 3½%, 1964-74	JJ	95	3 8 5	3 10 2
Australia (Commonwealth) 3%, 1955-58	AO	94	3 10 3	3 9 1
*Canada 4%, 1953-58	MS	110	3 12 9	3 1 3
New South Wales 3½%, 1930-50	JJ	100	3 10 0	3 10 0
New Zealand 3%, 1945	AO	99	3 0 7	3 5 6
Nigeria 4%, 1963	AO	107	3 14 9	3 11 1
Queensland 3½%, 1950-70	JJ	100	3 10 0	3 10 0
*South Africa 3½%, 1953-73	JD	102	3 8 8	3 6 0
Victoria 3½%, 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS.				
Birmingham 3%, 1947 or after	JJ	83½	3 11 10	—
Croydon 3%, 1940-60	AO	93	3 4 6	3 10 2
Leeds 3½%, 1958-62	JJ	96	3 7 8	3 10 5
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJQ	96	3 12 11	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	85½	3 10 2	—
*London County 3½%, 1954-59	FA	102	3 8 8	3 5 11
Manchester 3%, 1941 or after	FA	83	3 12 3	—
Manchester 3%, 1958-63	AO	95	3 3 2	3 6 2
Metropolitan Consolidated 2½%, 1920-49	MJSD	98	2 11 0	2 15 1
Met. Water Board 3% "A" 1963-2003	AO	86½	3 9 4	3 10 9
Do. do. 3% "B" 1934-2003	MS	89	3 7 5	3 8 6
Do. do. 3% "E" 1953-73	JJ	92	3 5 3	3 8 3
Middlesex County Council 3%, 1961-66	MS	92	3 5 3	3 9 9
*Middlesex County Council 4½%, 1950-70	MN	105	4 5 9	3 18 0
Nottingham 3%, Irredeemable	MN	82	3 13 2	—
Sheffield Corporation 3½%, 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	104½	3 16 7	—
Great Western Rly. 4½% Debenture	JJ	113½	3 19 4	—
Great Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Great Western Rly. 5% Rent Charge	FA	118	4 4 9	—
Great Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Great Western Rly. 5% Preference	MA	89	5 12 4	—

*Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

